IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 16232 of 2004

Between:

K. Sadasiva Rao, S/o. Bhaskar Rao,
R/o. H.NO. 13-6-439/1/A/96, Balajinagar, Ring Road,
Gudimalkapur, Hyderabad.

..... PETITIONER

AND

Assistant Divisional Engineer (Electricity) Distribution-XXVII, City-VII, 1st Floor,
SDHSS,APCPDCL., Masab Tank, Hyderabad-29.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly a Writ in the nature of Writ of Mandamus declaring the action of the respondent in disconnecting the power supply to the service bearing H.No.13-6-439/1/A/96, Balajinagar Ring Road, Gudimalkapur, Hyderabad, as illegal and arbitrary and consequently direct the respondent herein to restore power supply forthwith.

Counsel for the Petitioner: MR.A.RAVI SHANKAR

Counsel for the Respondent: MR.KANAKAMEDALA RAVINDRA KUMAR

The Court at the admission stage made the following:

ORDER:

This writ petition is filed seeking a declaration that the action of the respondent in disconnecting power supply to the service connection bearing No.S0057910 situated in the premises bearing No.13-6-439/1/A/96, Balajinagar Ring Road, Gudimalkapur, Hyderabad, is arbitrary and illegal, and for a consequential direction to the respondent to restore the power supply forthwith.

The petitioner states that he is the owner of the above premises and that the said premises is being used for residential purpose as well as for a small business in paints being carried on by him. The premises has service connection bearing No.S0057910.

While so, the petitioner was served with the impugned notice dated 31.08.2004 stating that on 20.08.2004 the premises was inspected by ADE/DPE-II/Hyd(C) and during the inspection it was noticed that both the meters cover seals are suspected in tampered condition and that the MRT seals provided to meter cover are intact. It was further alleged that the Meter body is damaged and a hole was found on the right side of the meter cover sufficient enough to insert any material, a study of which discloses that the consumption being recorded by the meter is unduly low taking into account the connected load, which *prima facie* indicates that the petitioner is guilty of pilferage of energy and that the value of the pilfered energy was provisionally estimated at Rs.1,11386/- and that the petitioner may make a representation to the Divisional Engineer

(Assessments), who will conduct enquiry into the matter. The electricity supply was also disconnected on the same day and the petitioner was advised to pay a sum of Rs.55,693/- being half of the estimated amount if he is desirous of obtaining restoration of power supply, pending enquiry. The said notice is under challenge in this writ petition.

I have heard the learned counsel for the petitioner and Sri K.Ravindrakumar, the learned Standing Counsel appearing for the respondent.

The learned counsel for the petitioner contends that the assessment made by the respondent under the impugned notice is erroneous and that the impugned notice is not in consonance with the provisions of the Electricity Act, 2003 (for short 'the Act').

It is to be noted that a Division Bench of this Court in Writ Appeal Nos.452 and 477 of 2004, while considering the scope of the provisions of the Act, held that under the Act there is no power while issuing provisional assessment to forthwith stop or disconnect power supply or call upon the consumer to pay even part of the provisional assessment amount till final assessment is made.

Having regard to the facts and circumstances of the case and following the ratio laid down by the Division Bench in the above case, I am of the view that the impugned notice cannot be sustained. Accordingly, the impugned provisional assessment notice dated 31.08.2004 is set aside and it is left open to the Assessing Authority to make a final assessment in accordance with law after affording due opportunity to the petitioner to submit his explanation.

Accordingly, the writ petition is disposed of at the admission stage with a further direction to the respondent to restore the power supply to the petitioner forthwith. No costs.

13.09.2004

Note: Furnish CC in two days

(b/o)

VGB

To

1 The Assistant Divisional Engineer (Electricity) Distribution-XXVII, City-VII, 1st Floor, SDHSS,APCPDCL., Masab Tank, Hyderabad-29.

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